No. 80-169

In The

Supreme Court of the United States

October Term, 1980

UNITED PARCEL SERVICE, INC.,

Petitioner,

-against-

WILLIAM MITCHELL,

Respondent.

BRIEF FOR RESPONDENT

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QUESTIONS PRESENTED

1. What is the appropriate Statute of Limitations to be applied to an action brought by an employee against his union, pursuant to 29 U.S.C. 185, where the employee alleges that the union failed to properly represent him during a grievance proceeding, and particularly the arbitration segment thereof, regarding his claim of wrongful discharge by the employer, and a concurrent action by the employee against the employer alleging breach of contract?

2. Where an employee's action against his union alleges that his union failed to properly represent him during a grievance proceeding, and particularly the arbitration segment thereof, is it fair or logical to label the employee's statutory action (29 U.S.C. 185) as an

attempt "to vacate an arbitration award" and to apply the 90 day statute of limitations applied to actions to vacate arbitration awards?

3. In a statutory (29 U.S.C. 185) "unfair representation" action brought by a New York employee against his union alleging that the union failed to properly represent him during a grievance proceeding, and particularly the arbitration segment thereof, is it fair or logical to label his statutory claim as "an attempt to vacate an arbitration award" when under New York Law [In Re Soto, 7 N.Y.2d 397, 198 N.Y.S.2d 282 (1960)] the employee would not even have standing to challenge the arbitration award, much less move to vacate it?

4. Where an employee commences a statutory action (29 U.S.C. 185) against

his union for "unfair representation" and a concurrent claim for relief against his employer for breach of contract based upon the Collective Bargaining Agreement, should the same statute of limitations apply against both defendants?

5. Where an employee commences a statutory action (29 U.S.C. 185) against his union for "unfair representation" and a concurrent claim for relief against his employer for breach of contract, should a different statute of limitations be applied depending on whether or not the union breached its duty of fair representation by refusing to proceed to arbitration in the first place or subverted the arbitration process by failing to fairly represent the employee?

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UNITED PARCEL SERVICE, INC.,

Petitioner,

v.

WILLIAM MITCHELL,

Respondent.

On Writ of Certiorari To The United States Court of Appeals For The Second Circuit

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BRIEF FOR RESPONDENT

Respondent, William Mitchell, hereby submits his brief on the merits in the above matter.

STATUTORY PROVISIONS INVOLVED

In addition to the statutory provisions referred to in the petitioner's brief, respondent believes the following statutory provisions are involved:

Section 214(2), (5) and (6) of the New York Civil Practice Law and Rules (CPLR), which provides as follows:

> "The following actions must be commenced within three years:
>
> 2. an action to recover upon a liability, penalty or forfeiture created or imposed by statute except as provided in sections 213 and 215;
>
> 5. an action to recover damages for a personal injury except as provided in section 215;
>
> 6. an action to recover damages for malpractice, other than medical malpractice;..."

STATEMENT OF THE CASE

The respondent William Mitchell ("Mitchell") was employed by the petitioner,

United Parcel Service, Inc. ("UPS") since 1964 (A77). At the time of the occurrence complained of, Mitchell was employed as a car washer at the UPS facility in Staten Island, New York and was a member of the respondent union, the Department Store and Wholesale Drivers, Warehousemen and Helpers, Local Union #177 (the "Union") (A77).

Throughout 1976 and 1977, UPS had undertaken a program to eliminate full time employees and replace them with part timers (A8).

On or about January 13, 1977, UPS discharged Mitchell for allegedly falsifying time cards and claiming payment for hours which he had not worked (A77). The Union claimed that its supervisors had witnessed him leaving his job earlier than his time card reflected (A77).

At all times, Mitchell denied the charges and made the Union aware of witnesses who could support his position (A78).

Initially, at the January 13, 1977 meeting, Mitchell's Union representative, Purcell, did not appear, claiming he was busy with contract negotiations in Washington and had no time to investigate Mitchell's matter (A80). Although the basis of UPS' claim was that Mitchell must have found a way to tamper with the time clock, the Union did nothing and did not even bother to check the time clock and determine if it operated properly (A81).

The Union did file a perfunctory grievance on Mitchell's behalf (A81). As a result of the grievance, a hearing was scheduled to take place in Virginia

Beach, Virginia, on February 16, 1977 (A81)*.

Admittedly, Mitchell was not advised where or when the hearing would take place until the afternoon of February 14, 1977, when Mitchell was sent a telegram reading as follows:

> "Please be advised that your grievance against United Parcel Service concerning your discharge will be heard by the panel on Wednesday February 16 1977 in Virginia Beach Virginia if you wish to attend you must assume all your expenses please advise" (A90).

By this time, Mitchell had been out of work for more than six weeks, had no funds to get to Virginia, could not possibly obtain witnesses on such notice or obtain counsel and was due to appear at the Welfare Department on that very day to obtain eating

---

*It should be kept in mind that the respondent lived and worked in New York, all of the witnesses were in New York and at no time prior to Mitchell's case had any part of the grievance been held away from the New York area (A82).

money for his family (A82)*.

Upon receiving the telegram, Mitchell requested the Union to adjourn the hearing or at the very least supply him with funds so that he could attend, which the Union refused (A82).

At the hearing, the Union made a mockery of Mitchell's position. The Union advised the panel that Mitchell was in fact guilty but that the penalty of discharge was too severe (A83). Then, in complete contradiction to the position the Union had just presented, it provided the panel with a copy of Mitchell's own statement wherein Mitchell continued to profess his innocence (A83).

Significantly, at the hearing the panel requested to know where Mitchell was,

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*The Union admits that they were aware that the grievance would take place in Virginia at least as early as February 10, 1977 (A84).

and the Union representative simply stated that Mitchell was not there (A85). Mitchell was then advised that his grievance had been denied and his discharge upheld and "that's the way it goes" (A82). When Mitchell requested a copy of the minutes of the hearing, the Union refused to provide them (A82).

Approximately 17 months after he was advised that he had been discharged in absentia at the Virginia Beach hearing, Mitchell retained counsel and commenced an action against the Union pursuant to Section 301(a) of the Labor - Management Relations Act, 29 U.S.C. 185(a), alleging that the Union had failed to properly represent him during a grievance proceeding, including the arbitration segment of that proceeding, and that the employer, UPS, had discharged Mitchell in violation of the collective bargaining agreement (A14-A15).

In Hines v. Anchor Motor Freight, Inc., 424 U.S. 554 (1976), this Court had specifically stated that such an action could be brought where an employee claims that his discharge was contrary to the Collective Bargaining Agreement and that the union's breach of its duty of fair representation had prevented him from properly contesting that discharge during a grievance proceeding.

The Decision of the District Court

Both UPS and the Union moved for summary judgment in the district court on the ground that the action was allegedly barred by the 90 day statute of limitations for actions to vacate an arbitration award, New York CPLR 7511(a). The district court, in an unreported decision, granted the defendants' motion relying entirely upon

its own prior decision in Wallace v. AT & T, 460 F.Supp. 755 (E.D.N.Y. 1978). The District Court granted the defendants' motion and dismissed the complaint on the grounds that if Mitchell was awarded relief, the effect "would be to vacate the determination of the arbitrators" and therefore reasoned that the proper statute of limitations to be applied is the ninety-day statute of limitations applicable to actions to vacate an arbitration award.

The Decision of the Court of Appeals

On appeal, the United States Court of Appeals for the Second Circuit reversed the decision of the District Court and held that to apply the ninety-day statute of limitations used to vacate arbitration awards to a Section 301 claim is improper, practically unfair and conceptually unsound.

The Court found that the proper statute of limitations to be applied was a six-year statute of limitations for breach of contract, New York CPLR 213(2), and that the mere fact that an arbitrator's decision may have been rendered during the course of the grievance procedure does not convert the 301 action to a proceeding to vacate an arbitration award.

SUMMARY OF ARGUMENT

Section 301 of the Labor-Management Relations Act does not contain its own statute of limitations. The federal courts in suits brought under that section are required to apply the most appropriate state statute of limitations.

It is the respondent's position that the state statute of limitations which should be applied is either three years or six years, but not the ninety-day statute of limitations which is applied to actions to vacate an arbitration award. The reasons are as follows:

1. A 301 action can be brought against the union and the employer in instances when the union either fails to proceed to arbitration or fails to properly represent the employee during arbitration. The mere

fact that there was an arbitral decision during the course of the grievance procedure should not convert the Section 301 claim into an action to vacate an arbitration award, particularly since this would lead to two different statutes of limitations for a Section 301 claim depending upon whether or not the grievance procedure provided for arbitration as part of the grievance procedure.

2. The arbitration procedure is between the employer and the union and under New York law, which is applicable in our case, the employee does not even have standing to challenge the arbitration award but his sole remedy is a Section 301 claim. See, In Re Soto, 7 N.Y.2d 397, 198 N.Y.S.2d 282 (1960).

3. A Section 301 claim against the union for failure to represent is a statutory claim governed by New York CPLR 214(2), which provides for a three-year statute of limitations, and in an analogous situation involving the Civil Rights Act, 42 U.S.C. 1983, which similarly creates a statutory cause of action and does not have a built-in statute of limitations, the courts have consistently applied the statute of limitations for an action brought upon the statute.

4. In an action brought against the union for a failure to properly represent the employee, the employee is not attacking the arbitration as such but the union's failure to properly represent him and is analogous to a malpractice action against an attorney for failure to properly represent a client during a

legal proceeding, which would likewise be governed by a three-year statute of limitations, New York CPLR 214(6).

5. The action against the employer is clearly a breach of contract action and is governed by New York CPLR 213(2), for which the statute of limitations is six years. If the same statute of limitations is to be applied as to both the union and employer defendants, then the six-year statute of limitations should be applied.

The petitioner's arguments that a three or six-year statute of limitations would frustrate the federal labor policy and cause chaos in management-labor relations is the type of argument frequently made in cases of this nature with no supporting facts, was made by management in Hines v. Anchor Motor Freight, Inc.,

supra, and specifically rejected by this Court, 424 U.S. at 570, and is based upon an erroneous assumption. The petitioner ignores the fact that labor unions can only exist and represent employees so long as employees believe that the union will fairly represent their interests. If employees do not receive fair representation by their union, then the very basic underpinning of the entire structure of labor-management relations will fall.

A Section 301 claim cannot be brought except where the employee has not received fair representation by his union and thus will have no effect in any instance where the union properly represents its members.

ARGUMENT

I. The Statute of Limitations to be Applied is the Most Appropriate Statute of Limitations Under New York State Law, Which is Either Three Years or Six Years, But Not Ninety Days Which is the Statute of Limitations to Vacate an Arbitration Award.

Section 301 of the Labor-Management Relations Act, 29 U.S.C. 185, does not contain a statute of limitations which governs actions to be brought pursuant to that Act. A district court must apply the relevant statute of limitations of the state in which it sits. See, International Union, UAW v. Hoosier Cardinal Corp., 383 U.S. 696, 704-05 (1966).

In our case, we are dealing with a New York employee and no party has claimed that the law of any state other than New York should be applied. The petitioner

takes the position that the only two possible statutes of limitations which can be applied pursuant to New York law is either (i) New York CPLR 7511(a), a ninety-day statute of limitations applied to actions to vacate arbitration awards; or (ii) New York CPLR 213, the six-year statute of limitations for breach of contract.

The United States Court of Appeals for the Second Circuit determined that the appropriate statute of limitations was the breach of contract statute of limitations pursuant to New York CPLR 213 (624 F.2d at 398).

As was submitted by Mitchell in the Court below, the court need not choose solely between the ninety-day statute of limitations to vacate arbitration awards, New York CPLR 7511(a), or the six-year

breach of contract statute of limitations, New York CPLR 213.

New York CPLR 214(2) specifically provides that where an action is brought upon a statutory claim, a three-year statute of limitations shall be applied. In dealing with a similar statutory claim, 42 U.S.C. 1983, under the Civil Rights Act, which likewise does not have a built-in statute of limitations, the courts have made it clear that in applying New York law the apporpriate statute of limitations is three years pursuant to New York CPLR 214(2). See Meyer v. Frank, 550 F.2d 726 (2d Cir. 1977); Martin v. Merola, 532 F.2d 191 (2d Cir. 1976); and Swan* v. Board of

*The Sixth Circuit has in fact held that, in a 301 case, the statute of limitations to be applied is one for breach of a statutory duty. See Gray v. International Assoc. of Heat and Frost Insulators and Asbestos Workers, Local No. 51, 416 F.2d 313 (6th Cir. 1969); see also, Canada v. United Parcel Service, Inc., 446 F.Supp. 1048 (N.D. Ill. 1978).

Education, 319 F.2d 56 (2d Cir. 1963).

The cases in the various circuits have characterized a 301 claim as either a tort action and applied the appropriate state tort statute of limitations; see, Sanderson v. Ford Motor Co., 483 F.2d 102, 114 (5th Cir. 1973); De Arroyo v. Sindicato de Trabajadores Packinghouse, AFL-CIO, 425 F.2d 281, 286-287 (1st Cir.) cert. denied, 400 U.S. 877, 91 S.Ct. 117, 27 L.Ed.2d 114 (1970); and Smart v. Ellis Trucking Co., Inc., 580 F.2d 215 (6th Cir. 1978), or the contract statute of limitations, as the Second Circuit did in this case and as the Eighth Circuit did in Butler v. Local U. 823, Int. Bro. of Teamsters, 514 F.2d 442 (8th Cir. 1975).

The Sixth Circuit in Smart v. Ellis Trucking Co., Inc., supra, applied the

Michigan three-year statute of limitations for injury to personal property to a Sectio 301 claim. The defendants in that case, as in this one, made the same argument; that the plaintiff's Section 301 claim was allegedly barred because of the Michigan statute of limitations to vacate an arbitra tion award. The Sixth Circuit disposed of that argument in language directly applicable to this case, stating,

> "The simplest answer to Ellis' argument is that Appellant's action for wrongful discharge is not in the nature of a motion to vacate or modify an arbitration award, at least to the extent that it states a claim under §301. Although the effect of a judgment for Appellant would be to nullify the arbitral decision, the §301 action is 'independent' of the grievance process. See Hines v. Anchor Motor Freight, 424 U.S. at 554, 96 S.Ct. at 1048, 47 L.Ed.2d at 231. Indeed, such a claim can be brought even before an arbitral decision where a union refuses in bad faith to process a grievance. Vaca v. Sipes,

> 386 U.S. 171, 186, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967). The fact that the plaintiff must show a flaw in the grievance process as a prerequisite to recovery does not alter the basic focus of the §301 claim on the propriety of the discharge itself." 580 F.2d at 219.

The petitioner, UPS, in its brief relies upon the recent case of Liotta v. National Forge Co., __F.2d __, 105 LRRM 2636 (3d Cir. Sept. 10, 1980) for the proposition that the proper statute of limitations to be applied is the statute of limitations to vacate an arbitration award. The Liotta decision relied upon several aberrational lower court decisions for that proposition and refused to follow Smart v. Ellis Trucking Co., Inc., supra, although it cited that case and was obviously aware of it.

In addition, the Liotta case is distinguishable because the court there appeared

to base its decision in large part upon the fact that the plaintiff's suit was only against the company and not the union. The Court specifically stated in Liotta,

> "Moreover, the fact that Liotta alleges that the arbitration award is invalid due to the Union's breach of its duty of fair representation does not change the limitations period because the suit here is against the Company and not the Union. Thus, it is clear that Liotta was dissatisfied with and simply seeks to upset the arbitrator's decision that the Company did not wrongfully discharge him." (emphasis added)

Mitchell suggests that the nature of a Section 301 claim against a union is in the nature of a malpractice action--the same type of malpractice action that a client might bring against an attorney when the attorney did not represent the client properly during a court proceeding.

For example, if an attorney improperly represented a client before an arbitration tribunal resulting in an adverse decision against the client, the client could then bring a malpractice action against the attorney. The client's action against the attorney would clearly not be governed by the ninety-day statute of limitations to vacate the arbitration award but would rather be governed by a separate three-year statute of limitations pursuant to New York CPLR 214(6). The same reasoning applies to a Section 301 claim by a union member against his union for the union's failure to properly represent him during a grievance procedure.

The Second Circuit's reasoning, which has likewise been adopted by other courts of appeal, was that the six-year statute

of limitations applied because, as against the employer, the action was clearly one for breach of contract pursuant to New York CPLR 213(2), 624 F.2d at 396. Butler v. Local U. 823, Int. Bro. of Teamsters, supra, stands for the same proposition, 514 F.2d at 447. The Court then went on to state that since the statute of limitations against the employer and the Union should be the same statute of limitations pursuant to Abrams v. Carrier Corp., 434 F.2d 1234, 1252-53 (2d Cir. 1970), cert. denied, 401 U.S. 1009 (1971), the same six-year limitations period should be applied to both UPS and the Union.

One thing that is clear, however, is that the ninety-day statute of limitations to vacate arbitration awards has nothing at all to do with a Section 301 claim

brought by an employee against his union and employer. In our case, it would make no difference if the proper statute of limitations is found to be three years or six years since, in any event, Mitchell's claim would be timely.

II. In a Section 301 Claim Brought Against a Union for Failing to Properly Represent an Employee, and the Employer for Breach of Contract, the Mere Fact That an Arbitral Decision May Have Been Rendered During the Course of The Grievance Proceeding Does Not Convert the 301 Claim and Breach of Contract Claim Into an Action to Vacate an Arbitration Award.

There is no doubt that an employee could bring a Section 301 claim against the union because the union either fails to commence an arbitration proceeding in the first instance, a Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903 (1967) situation, or fails to properly represent the employee

either prior to the arbitration or during the arbitration which is part of the grievance procedure.

In Hines v. Anchor Motor Freight, Inc., supra, this Court cited with approval the Ninth Circuit's statement in Margetta v. Pam Pam Corp., 501 F.2d 179 (9th Cir. 1974), stating:

> "'To us, it makes little difference whether the union subverts the arbitration process by refusing to proceed as in Vaca or follows the arbitration trail to the end, but in so doing subverts the arbitration process by failing to fairly represent the employee. In neither case, does the employee receive fair representation.'"

This Court there made it clear that it would not create a distinction for Section 301 claims brought because the union wrongfully refused to proceed to arbitration and 301 claims brought because the union failed to

properly represent the employee during the arbitration which was part of the grievance procedure.

If UPS' position is upheld that where a grievance procedure contains an arbitral decision as part of that procedure then a Section 301 claim must be brought within ninety days pursuant to the statute of limitations to vacate an arbitration award, then we would be creating the very distinction which this Court in Hines stated should not be created and which will create a true state of chaos with regard to which statute of limitations should be applied to a Section 301 claim.

For example, if an employee claims that the union failed to properly represent him during the initial step in the grievance procedure and also failed to properly repre-

sent him during the arbitration step of the grievance procedure, would the employee's claim then be split in two, with the employee having three or six years to commence a Section 301 claim with regard to the union's malfeasance before the arbitration award or after it and only ninety days with regard to any complaints which the employee might have about the manner in which the union represented him during the arbitration procedure.

Similarly, if merely proceeding through the arbitral step could limit an employee's time to bring a Section 301 claim to ninety days, the real possibility exists that unions will always proceed to arbitration, although providing no meaningful representation, and thus limit the employee's time to commence a 301 claim to ninety days.

Mitchell submits that a Section 301 claim has nothing at all to do with the arbitration which was part of the grievance procedure. If the employee received proper representation, then no Section 301 claim exists. If the employee did not receive proper representation, then the mere fact that the grievance procedure contains an arbitral decision as part of that procedure should not limit the employee's time to commence a 301 action to ninety days. As the Second Circuit succinctly stated in deciding this case in the Court below:

> "The mere fact that an arbitral decision has been rendered during the course of the employee termination process does not convert the character of a § 301 action from an action for breach of contract to an action for vacating an arbitartion award." 624 F.2d at 398.

As the Second Circuit pointed out, not only is the ninety-day limitation improper and unjust to the employee, but it is conceptually unsound. Under the law of the State of New York, an employee has no standing to challenge an arbitration award rendered in a grievance proceeding between his union and his employer. In In Re Soto, 7 N.Y.2d 397, 198 N.Y.S.2d 282 (1960), the New York Court of Appeals stated in language directly applicable to this case:

> "...we made it clear that an employee could not avail himself of the arbitration procedure provided in the collective bargaining agreement since there, as here, the contract granted such right only to the union and to the employer (cf. Hudak v. Hornell Ind., 304 N.Y. 207, 106 N.E.2d 609). This was in the interest of maintaining orderly procedure under accepted principles of substantive law. At the same time, an employee is not foreclosed, in an appropriate case, from pursuing any remedy at law that might be available for breach of fiduciary duty owing by the union." 198 N.Y.S. 2d at 283-284 (emphasis added).

The New York Court of Appeals thus made it clear that not only does an employee have no standing to challenge an arbitration award in a proceeding such as the one involved in this case, but that the employee's remedy is a separate action under Section 301.

That uncertainty would result if UPS' position is upheld on this appeal is apparent. A Section 301 claim may be brought in either the state court or federal court. The New York State courts have made it clear that an employee has no standing to vacate an arbitartion award, see In Re Soto, supra, and the only New York case which has touched upon the issue of the statute of limitations even in a peripheral manner, Jackson v. Regional Transit Service, 54 A.D.2d 305, 388 N.Y.S. 2d 441 (4th Dept. 1976), made it clear that whatever the statute of limitations was in

a Section 301 claim it was not the ninety-day period provided by New York CPLR 7511(a), for if that were the limitations period the plaintiff's claim would have had to be dismissed as untimely, the court in Jackson stating:

> "The union then demanded arbitration and the merits of the alleged wrongful discharge were presented to the arbitrator. On December 3, 1975 the arbitrator issued a decision in which he held that the failure of the union to name its arbitrator within the contractual time limits (5 days) renders the grievance non-arbitrable. No proceeding was instituted within the ninety-day time limit to modify or vacate the award (CPLR 7511)." 388 N.Y.S.2d at 442

Accordingly, if in the federal courts the ninety-day statute of limitations was deemed to be applicable and in the state courts the three or six-year statute of limitations was deemed to be applicable, the result would be rampant forum shopping

and a clear disregard of this Court's mandate in International Union, UAW v. Hoosier Cardinal Corp., supra, that the appropriate statute of limitations is the relevant statute of limitations of the state in which the court sits. One must believe that the statute of limitations selected by the courts of New York is the most relevant one, and not the ninety-day statute of limitations which the petitioner is seeking to engraft upon Section 301.

The Court below properly pointed out that a Section 301 claim is a separate action, separate and apart from any arbitral decision that may have occurred during the grievance proceeding.

We are not here dealing with a situation where either the Union or the employer is attacking the arbitrator's decision. In that situation, the ninety-day limitation period

to vacate an arbitration award would be applicable. What we are dealing with is the employee's claim that he was not properly represented, and with regard to that claim, the statute of limitations applicable to vacating arbitration awards is totally inapposite.

III. Providing a Discharged Employee Who Has Been Sabotaged by His Own Union a Reasonable Period of Time to Commence a Section 301 Claim Would Not Threaten Federal Labor Policy, Discourage Arbitration or Destroy Collective Bargaining as is Prophesized by Petitioner's Counsel.

The Second Circuit in its decision in the Court below pointed out:

> "Rather, actions under § 301 are limited to those rare cases where the discharged employee can demonstrate both that the employer violated the collective bargaining agreement by discharging him and that the union violated its statutory duty by failing to represent him in good faith.

> "This is a heavy burden which the § 301 plaintiff must shoulder in order to overturn his discharge. There is no need to increase this burden by requiring the employee to commence the action in an unduly short period of time after his discharge. To require an employee--who is suddenly out of work--to obtain new counsel and file an action against his union and employer all within 90 days of his discharge strikes us as unwarranted." 624 F.2d at 397 (emphasis added)

The Circuit Court's decision is clearly reasonable and commensurate with the practicalities of real life. When an employee has a valid 301 claim it is because the union which was supposed to represent him is suddenly found to have sold him out. To require an employee suddenly out of work to obtain counsel and file a Section 301 claim against his union within ninety days would be totally unreasonable, unrealistic and contrary to this Court's mandate in International Union, UAW v. Hoosier Cardinal

Corp., supra. In that case, this Court held that the appropriate Indiana statute of limitations to a Section 301 claim was six years. This Court also specifically stated:

> "Other questions would be raised if this case presented a state law characterization of a §301 suit that reasonably described the nature of the cause of action, but required application of an unusually short or long limitations period. See, e.g., N.M. Stat. § 59-3-4 (1953) (an action for wages 'must be commenced within sixty (60) days from the date of discharge...')." 383 U.S. at 707.

The Petitioner attempts to distinguish International Union, UAW v. Hoosier Cardinal Corp., supra, on the grounds that the grievance procedure there did not contain an arbitral decision. This argument is a spurious one.

If employers will refuse to enter into collective bargaining agreements because the

six-year statute of limitations is too long then it does not matter if there was an arbitral decision or not. This would be merely a distinction without a difference. The spectre that a 301 claim would destroy the collective bargaining process was raised before this Court in Hines v. Anchor Motor Freight, Inc., supra, and disposed of by this Court with the statement that unless employees had a manner of redressing their grievance when they were improperly represented by the union:

> "The contractual system would then cease to qualify as an adequate mechanism to secure individual redress for damaging failure of the employer to abide by the contract." 424 U.S. at 571

The petitioner's position also ignores the basic proposition that unions exist to protect the membership and not that the membership exists to support the union.

If employees are given no means of reasonable redress when their union fails to properly represent them, then the entire union-management system which now exists would collapse. It should also be recalled, as this Court pointed out in Hines, supra, that a 301 action does not exist unless the union has breached its duty to the employee so that if the union does not breach its duty there will be no question of any labor policy being endangered.

CONCLUSION

For the foregoing reasons, respondent respectfully requests this Court to affirm the decision of the Court of Appeals.

Respectfully submitted,

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